2

No. 05-465

NOV 9 - 2005

In The

Supreme Court of the United States

MOHAWK INDUSTRIES, INC.,

Petitioner,

v.

SHIRLEY WILLIAMS, GALE PELFREY, BONNIE JONES, and LORA SISSON, individually and on behalf of a class,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

BRIEF IN OPPOSITION

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INTRODUCTION

Petitioner Mohawk Industries, Inc. ("Mohawk") asks this Court to grant *certiorari* to review two questions. The first question concerns an alleged circuit split over whether a corporation and its agents can constitute an "association-in-fact" enterprise under the federal Racketeer Influenced and Corrupt Organizations Act ("RICO"). But that question was neither discussed nor decided in the Court of Appeals decision of which Mohawk seeks review. The Eleventh Circuit, like the district court, merely concluded that Respondents' allegation of an association-in-fact enterprise consisting of a corporation and distinct third-parties comes within the statutory definition of an enterprise. 18 U.S.C. § 1961(4) ("enterprise includes . . . any union or group of individuals associated in fact though not a legal entity"). The Complaint did not allege an agency relationship among the members of the enterprise, and the Eleventh Circuit made no ruling regarding whether a corporation and its agents can constitute an enterprise. Accordingly, this case does not even present the first question Mohawk seeks to raise.

Mohawk's second question is whether Respondents' complaint adequately alleges a proximately caused injury to business or property. Every circuit court to address this question (the Sixth, Ninth and now Eleventh) has held allegations that an employer depresses wages by hiring illegal workers adequately states a proximately caused injury to business or property under the RICO statute. There is no split of authority as to whether an injury to wages is an injury to business or property and no reason for the Petition to be granted.

REASONS FOR DENYING THE PETITION

The Eleventh Circuit's interlocutory, *per curiam* decision to affirm the denial of a motion to dismiss in this case does not merit review by this Court. The Court of Appeals decision is compelled by the plain language of the federal RICO statute and this Court's decisions. Because neither of the questions that Mohawk presents satisfies

this Court's standards for review, the petition should be denied.

I. The Eleventh Circuit Did Not Address Mohawk's First Question Presented.

Mohawk's Petition argues that this Court should grant *certiorari* to resolve an alleged circuit split over whether a "defendant corporation and its agents can constitute an 'enterprise' under [RICO]."[1] Mohawk claims that the Court of Appeals for the Eleventh Circuit answered this question in the affirmative,[2] but that is not correct. Respondents' Complaint does not allege an agency relationship between Mohawk and the third parties with whom Mohawk associates to obtain and harbor illegal workers. And the Eleventh Circuit did not construe the Complaint as alleging an agency relationship. Instead, the Court simply held that Respondents had alleged an association-in-fact enterprise that satisfies RICO's enterprise requirement. *Williams v. Mohawk, Industries, Inc.*, 411 F.3d 1252, 1258 (11th Cir. 2005) (allegations "that Mohawk and third-party temp agencies/recruiters have conspired to violate federal immigration laws, destroy documentation and harbor illegal workers" satisfy enterprise requirement); *see also*, 18 U.S.C. § 1961(4) of RICO (an enterprise is "any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity"). Because the opinion below does not address the first question Mohawk presents, this Court should decline to grant *certiorari* on that question.

The Eleventh Circuit's holding that entities that associate with third parties to engage in a pattern of racketeering activity are subject to RICO liability is in

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[1] *See* Petition for a Writ of Certiorari at i & 10-18 (hereafter "Petition").

[2] *Id.* at 3 ("The Eleventh Circuit's affirmative answer to this question exacerbated a sharp split in the court of appeals (now two to three)").

accord with settled law and the plain language of the RICO statute. This holding breaks no new ground and does not criminalize routine corporate conduct. Nor does it present any basis for *certiorari* review.

II. Respondents' Complaint Properly Alleges a Proximately Caused Injury to Business or Property.

The second question that Mohawk presents for review is whether Respondents' claim that Mohawk depresses wage rates through the illegal hiring and harboring of unauthorized workers adequately alleges a proximately caused injury to business or property. In concluding that the Complaint states a RICO claim, the Eleventh Circuit engaged in a thorough analysis of the relevant standards and authorities. *Williams*, 411 F.3d at 1260-1263. The Eleventh Circuit's conclusion that the Complaint adequately pleads an injury to business or property under RICO's statutory damages provision, 18 U.S.C. § 1964(c), is in complete accord with decisions of the Sixth and Ninth Circuits, which came to the very same conclusions in RICO cases alleging the same violations and injuries. *Trollinger v. Tyson Foods*, 370 F.3d 602, 612-619 (6th Cir. 2004); *Mendoza v. Zirkle Fruit Co.*, 301 F.3d 1163, 1168-1172 (9th Cir. 2002). The Second Circuit engaged in the same analysis and reached the same conclusion in a RICO case alleging competitive injury caused by the same predicate offenses, an illegal immigrant hiring scheme. *Commercial Cleaning Servs., L.L.C. v. Colin Service Sys., Inc.*, 271 F.3d 374 (2d Cir. 2001).

All four of these circuit court decisions are consistent with this Court's holding, in the civil RICO context, that "at the pleading stage, general factual allegations of injury resulting from the defendant's conduct may suffice, for on a motion to dismiss we presume that general allegations embrace those specific facts that are necessary to support the claim." *N.O.W. v. Scheidler*, 510 U.S. 249, 256 (1994) (reversing dismissal of RICO complaint); *see also Swierkiewicz v. Sorema, N.A.*, 534 U.S. 506 (2002) (rejecting the use of a

heightened pleading standard as inconsistent with Rule 8). Thus, there is no split of authority on the adequacy of the Respondents' allegations to state a RICO claim and no reason to grant *certiorari*.

Mohawk asserts that the Eleventh Circuit's routine decision, merely holding that the allegations of a RICO complaint state a cause of action, is somehow made more complex because it concerns wage rates. But the Eleventh Circuit's decision follows and is entirely consistent with prior authorities. Hence, the decision neither expands nor departs from existing law. As set forth above, every court in the nation to consider the question has held that a claim of wage depression caused by an illegal immigrant hiring scheme states an injury to "business or property" under 18 U.S.C. § 1964(c). *See Trollinger, supra*; *Mendoza, supra.* Every other decision interpreting this section has also held that wages are "business or property." *See, e.g., Rice v. Janovich*, 109 Wash. 2d 48, 60-61, 742 P.2d 1230, 1237 (Wash. 1987) ("federal cases since *Sedima* have specifically held that lost wages may be recovered in civil RICO actions, and we follow that conclusion") (collecting authorities); *accord,* David B. Smith and Terrance G. Reed, CIVIL RICO, § 10.04 at 20.2 (Matthew Bender 2005) ("Nonetheless, it is generally accepted that lost wages are a form of property damage that is recoverable under RICO") (citing *Mendoza*).

Indeed, the Ninth Circuit recently confirmed that an injury to wages is an injury to business or property in a *per curiam* decision. *Diaz v. Gates*, 420 F.3d 897, 898 (9th Cir. 2005) (holding that "lost employment, employment opportunities, and the wages and other compensation associated with said business . . . " were compensable injuries under RICO). Even the *Diaz* dissent agreed that *Mendoza* was properly decided on this question. It stated: "*Mendoza's* determination of standing [under RICO] was understandable on its facts, where the conspiracy challenged under RICO was aimed directly at suppressing the wages of farm workers." *Id.* at 907 (Gould, dissenting). Thus, the Eleventh Circuit's straightforward holding that "[g]iven that a relationship clearly exists between plaintiff workers and their employer, Mohawk, we conclude that a

similar business interest exists in this case, and that the employees' alleged injury to their business interests satisfies the business-interest requirement" is plainly correct and plainly not worthy of review. *Williams,* 411 F.3d at 1260.

Moreover, Mohawk's contention that the "acceptance" of illegally depressed wages results in a waiver of the right to sue under RICO, Petition at 21, is completely erroneous. None of the courts to address claims of wage depression in illegal hiring cases have accepted such an argument. The argument is inconsistent with jurisprudence under the antitrust statutes on which RICO is modeled. If Mohawk were correct, then a buyer who "voluntarily" paid a supra-competitive fixed price could not thereafter raise an anti-trust challenge. Needless to say, this Court and every circuit permit consumers to sue sellers for charging illegally fixed prices. Any suggestion that the payment of an illegal price constitutes a waiver of the right to sue for price-fixing has long been discredited. *See, e.g., Hanover Shoe v. United Shoe Mach. Corp.*, 392 U.S. 481, 489 (1968) ("We think it sound to hold that when a buyer shows that the price paid by him for materials purchased for use in his business is illegally high and also shows the amount of the overcharge, he has made out a *prima facie* case of injury and damage within the meaning of sec. 4 [of the Clayton Act]"). There is no split of authority on the question of whether Respondents may sue for depressed wage rates under RICO and no reason to grant *certiorari* on that question.

CONCLUSION

Mohawk's Petition should be denied because the two questions it presents do not meet this Court's standards for a grant of *certiorari*. *See* Supreme Court Rule 10. Mohawk's first question presented was neither discussed nor decided in this case. Mohawk's second question asks this Court to review the application of well-settled law since the question has been uniformly decided by every circuit to consider it. As a result, the Petition does not present a question that merits review.

Respectfully submitted,

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